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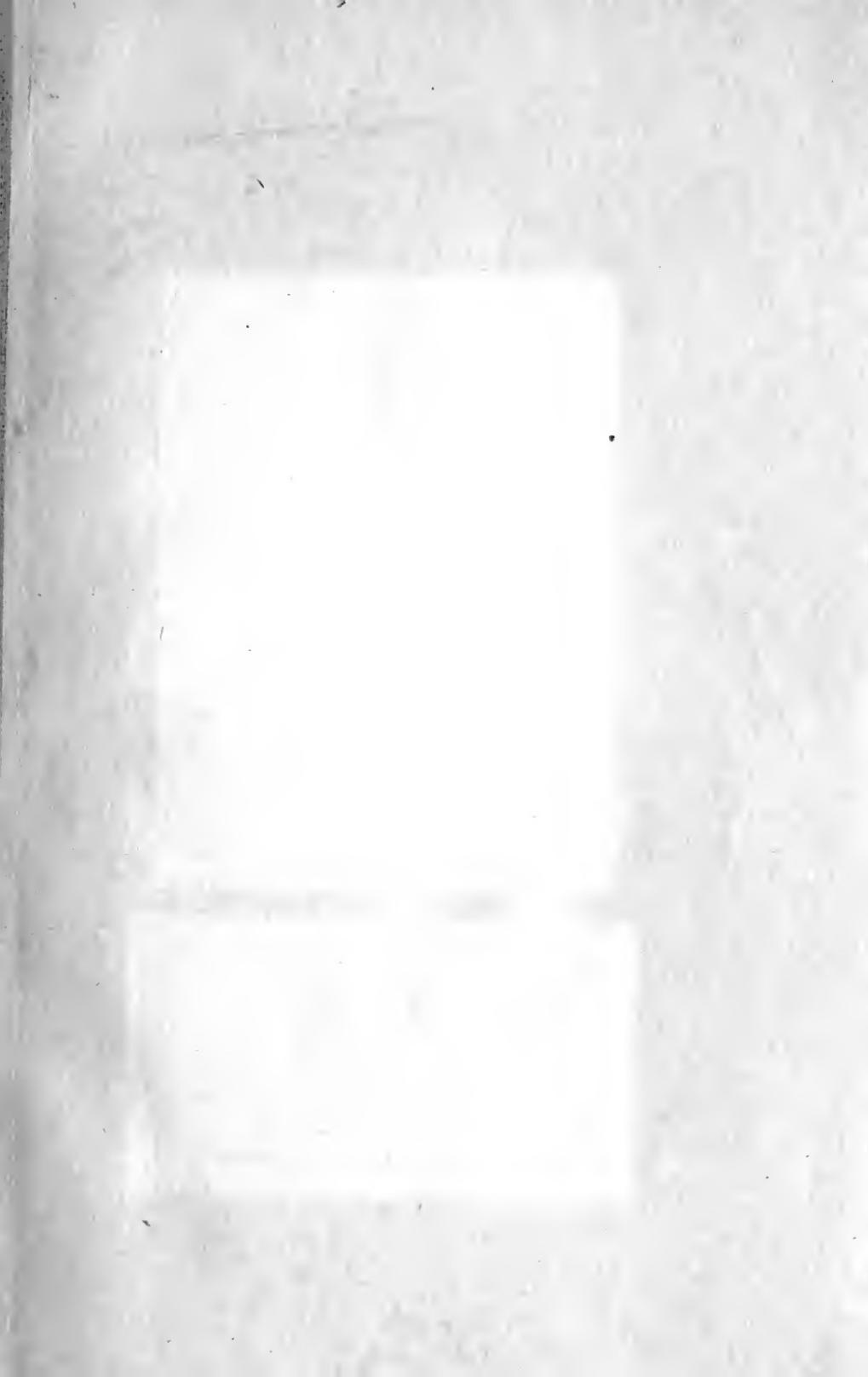
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RELATIONS
OF
COMMUNITIES AND STATES
DURING EPIDEMICS:

AN ADDRESS BY THE
HONORABLE JAMES B. EUSTIS,
DELIVERED AT THE
COMMENCEMENT
OF THE

Medical Department of the University of Louisiana,

NEW ORLEANS, MARCH 19, 1880.

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AN IMPORTANT QUESTION.

Commercial Intercourse between Communities
and States During Epidemics.

Address of Ex-Senator Eustis at the Medical
College Commencement.

Hon. James B. Eustis yesterday delivered the following able and interesting address at the Commencement Exercises of the Medical College :

I have felt an unusual embarrassment in selecting a subject upon which to address you, as my education and habits of thought do not qualify me to venture to instruct you upon any scientific subject; but there is a public question involving such vast interests, and to which the medical profession bears so peculiar a relation of responsibility, that if I succeed in giving it due prominence for discussion by others, I will feel that I have measureably acquitted myself of the difficult task imposed by my acceptance of the complimentary invitation to address you.

The great problem to which I allude, which in my judgment involves the material destinies of the South Mississippi Valley, is the relations of communities and States during epidemics. If this were singly a question of the origin and spread of a disease, of the cure and prevention of a disease, a question of individual and public health, I would leave it to the domain of medical polemics, recognizing that those who are educated to master a science so remote from vulgar comprehension, a science governed by laws so incomprehensible and mysterious,

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have a right to have these questions disposed of by the authority of their professional judgment.

If it were simply a question of humanity, of moral conduct and moral responsibility, I would leave its discussion to those whose high and sacred prerogative it is to preach peace on earth, good will to men, and man's duty to man, and to his God.

It has bearings beyond the limits of exclusive sanitary considerations, and beyond the obligations of moral duty and the comity of good neighborhood, and in endeavoring to present its important and varied legal and commercial aspects, I disclaim any purpose to assail any theory supported by medical men, or to say anything that is intended to weaken human sympathy for human distress.

On the one hand we have a strong popular belief, a fanatical popular alarm—I use the word fanatical to denote its earnestness—an undefined popular right of self-preservation, which finds its emphatic manifestation in what are known as shot-gun quarantines. On the other hand we have the large, increasing and peremptory demands of commerce, which means intercourse with its necessities so closely interwoven into the very conditions of our daily existence, that any prolonged or unreasonable interference with its freedom, makes us feel as though the circulation of our own blood was hindered. For this is an age of commercial activity, commercial enterprise, commercial development. The most striking manifestation of American energy and American civilization is the freedom, facility and rapidity of commercial intercommunication, and its free enjoyment is a fundamental condition in the economy of American life. No one can escape the aggressive, far-reaching and beneficent power of commercial expansion. Its blessings are like the rains from heaven. A community that seeks to isolate itself in the wildest and most remote spot in our country to foster in its seclusion a peculiar creed, as soon as it is numerous enough to trade, is brought against its will into direct communication with the great commercial centres of this continent.

Commerce has had many struggles in the history of humanity, and its triumphs and ascendancy are due to its brave resistance to the tyranny of unreasonable restraints; it has ever

been friendly to liberty ; it powerfully contributed to the overthrow of feudalism ; it has compelled by wars barbarous nations to make commercial treaties, and to arrest its progress and development to-day is to extinguish the brightest torches that illumine modern civilization, and no people, unless they wish to rejoice in their own decadence, can forget the wise admonition of its great friend and patron, Richard Cobden, that to be free and to be prosperous we must give wings to commerce. It is, therefore, not surprising that under all circumstances, under all conditions, in every exigency, even during epidemics, commerce should demand that its great interests shall be protected by some uniform and authoritative system of regulations, some consistent and rational code of conventional laws to determine the rights and relations of communities during epidemics, based upon some common understanding of mutual privileges and mutual protection.

For every emergency that disturbs society we are supposed to have laws ; we have laws of war as well as laws of peace, and it would seem that when society is agitated by some undue excitement, convulsed by some frenzy, seized by some mania, swayed by some superstitious belief, that then does the requirement of some stable and controlling authority become the more necessary and the more imperative. Such is not the case during the period of epidemics.

Every community makes unto itself a law, or rather a declaration, which it enforces, based upon its views of its own rights, its own powers and its own scientific speculations, and under the operation of this independent and irresponsible action, warlike notifications of non-intercourse follow, and we have a practical suspension of the authority of civil government as regards its efficiency to protect what are believed to be constitutional commercial privileges. Thus is presented a perilous antagonism between two great forces in society, commercial rights and the methods of a community to protect itself against the introduction of a contagious or infectious disease, a conflict full of perplexities and most difficult of adjustment. But as we are the denounced and offending community, as we are made the victims of commercial ex-communication by the

utterance of that terrible curse of separation as against a leprous community, as it is against us that this war of non-intercourse is declared, with its incalculably ruinous consequences, it becomes our duty to discover the reason, the law, the remedy, if any, for this abnormal condition of affairs which threatens to cloud our brightest hopes and to contradict the sanguine prophecies of our future greatness and wealth. Let it be announced that an epidemic exists in this city, and judging from the past, what may we expect to witness? Warlike preparations on every side, military campaigns inaugurated that would do credit to the genius of Von Moltke, proclamations of non-intercourse issued by whom we do not know, but enforced, artillery planted on the banks of the Mississippi River, not by the authority of the United States Government, not by the authority of even a State government, but by some local committee to warn steamboats freighted with merchandise and healthy passengers not to make a landing. When Spain owned the banks of the Mississippi, it was precisely for such a performance with regard to flatboats that the United States Government threatened to declare war against that power; and in 1861 it was the determination to enforce the freedom of the navigation of the Mississippi River, which includes the right to land and trade, that made the yeomanry of the West swarm into resistless armies. Railroad corporations are notified not to stop at stations that they own; sometimes they are required to increase their rate of speed, and on that condition can pass over their own property. At certain stations armed men take possession of trains, close the windows, hold the passengers in military duress, and deny to them the right to breathe fresh air. Upon the highways in our State sentinels with loaded guns are posted, skirmishers are deployed to resist the invasion of the enemy, that is, a person or a parcel of merchandise coming from New Orleans, unless it be playing cards, whisky or tobacco, which under this new military code are not, I believe, considered contraband of war, and under these arbitrary and unauthorized acts, this assertion of irresponsible power, these military proceedings, commercial rivalries and commercial jealousies wearing the saintly robes of

public health, make New Orleans play the role of Cinderella to such loving sister cities as Mobile and Galveston. In the meantime not a State speaks; this anarchy is produced by the edicts of towns, local committees, municipalities and police juries.

Can society continue to exist under such conditions?

No one claims that an infected person has the right to advertise in *personæ* and propagate a disease. No one claims the right to trade in and consign a disease. The complaint is not that an actually infected person or thing is treated otherwise than he should be. The complaint is that a whole community, without discrimination, is denounced and anathematized by irresponsible authority. Why, under the decision of the Supreme Court of the United States, cattle have more rights than these local authorities in our own and sister States accord to citizens of New Orleans. Missouri passed a law providing, "No Texas, Mexican or Indian cattle shall be driven or otherwise conveyed into or remain in any county in this State between the 1st day of March and the 1st day of November." The Supreme Court of the United States held that this was an indiscriminate denunciation against healthy and diseased cattle, and the law was set aside because a healthy Texas steer, a Mexican cow or an Indian heifer, if it had not the yellow fever or some other disease, had the constitutional right to come into and abide in any county in the State of Missouri.

In ancient times, when a man had the leprosy he was denounced as an individual leper; he alone was considered accursed, he alone was considered as smitten by the chastening rod of a wrathful God; he alone wore the badge of his degrading disease, was the recipient of man's inhumanity to man; he alone could not bathe his parched lips in the waters of brooks used by his fellow-man; the denunciation was against him alone, not against his brothers, his "sisters, his cousins and his aunts."

Some time ago, when torture was practiced to please God, and hot iron was thrust into living human flesh, men's nails were torn from their fingers, and their toes were twisted out of shape to inculcate a certain religious belief, this humane pro-

cess of conversion, these persuasive appliances of religious edification, were not employed indiscriminately against a whole community, but only the individual having the disease of heresy was denounced, tortured and damned, although heresy was considered a very contagious disease. Until the application of this doctrine, it was only in time of public war that the citizens occupying the same territory are considered as so closely associated that they lose their individual identity and this solidarity of pains and penalties is enforced.

It is not necessary to enumerate all the cases of outrage committed against our citizens. A people should be aroused to a sense of danger by a single occurrence. When four passengers in 1863 were taken from the Trent by an American captain, the British Government, though they were aliens, spent two million pounds sterling in sending ammunition and troops to Canada, and would consent to nothing less than the immediate return of those passengers to a British ship so that they could continue to travel unmolested.

I will select one of many occurrences which illustrates without exaggeration the acts of violence and restraint, this guerrilla warfare, to which our citizens are exposed.

In the latter part of October, 1878, a gentleman left this city to attend to the business of his sugar plantation, knowing that in exercising this right he was violating no law of the United States or of this State. In the evening he discovered that his sugar-house was surrounded by a force of twenty-five armed men. The captain asked him if he came from New Orleans : he pleaded guilty to that accusation. He was informed that he must leave instantly. All remonstrance was unavailing. It was in vain that he pleaded that he was an American citizen and had a right to be on the plantation that he owned—it was in vain that he protested that he was no messenger of death, no carrier of pestilence, no disseminator of disease, no pedler in yellow fever germs, that he was acclimated, having had the yellow fever, that he had passed through every epidemic during fifty years, that they might inspect and fumigate him, and they would discover that he was afflicted with no other disease than old age, which is not believed to be contagious

or infectious, though very disagreeable—it was all to no purpose, these constitutional and scientific arguments could not cool the military ardor of the captain and his army, and this unoffending citizen was by violence banished from his own estate.

If we have a civil government during epidemics, it is not an unimportant question to inquire under what authority was this military campaign conducted against this individual? This soldiery was not United States troops—they were not State militia, as the security of our free State was not endangered by this person going to his plantation. There is no law of the State authorizing these military bands to regulate this great question of intercourse. Though often repeated and generally acquiesced in, it is a monstrous violation of individual right and individual liberty, and with its increasing abuses, unless checked, will drive population, capitalist and laborer, from our midst and relegate us to the condition of a society governed by law. When, in old times, a pauper or diseased person was whipped and carted back to his place of abode and settlement, the treatment, though harsh, had the sanction of a statute.

Police juries are authorized to enact ordinances and regulations not inconsistent with the laws and constitution of the United States or the State, to protect their respective parishes against the introduction of disease.

Does this authorize military arrests, military duress, military campaigns, and military banishments? Does this mean that a police jury can adopt any theory, whimsical or scientific, as it chooses, and issue its edict against commercial intercourse? Are the great interests of commerce and the great rights of intercourse, which have been secured at such cost, to be decided by a jurisdiction so inferior, by a magistracy so insignificant?

The rights of commercial intercourse have a history whose traditions do not fade by the side of even those memorable struggles for personal liberty which we Anglo-Saxons cherish with a reverence that no lapse of time can efface.

In England the right of commercial intercourse is a chartered right. It was secured when those great guarantees of personal

liberty were wrested from kingly power. In Magna Charta (1215) the 24th section reads: "All merchants shall have safe and secure conduct to go out of and come into England and stay there and pass as well by land as by water, to buy and sell by the ancient and allowed customs without any heavy tolls except in time of war, or when they shall be of any nation at war with us."

In this country the right of intercourse is a constitutional right. No license can be required, no tax can be imposed for traveling—every one's passport is the constitution of the United States. Notwithstanding this general statement, those who look for affirmative Federal legislation to remedy these wrongs or expect, so long as we preserve our present form of government, that a Federal system of quarantine shall be adopted are doomed to be disappointed—that is, a Federal system that shall supersede and wipe out State quarantines and State health laws. I am not touching the question of its disirability, but am endeavoring to impress on you the conviction that I share, that the hope of Federal aid and Federal interference to solve this problem is illusory. The Federal Government does and will greatly promote our efforts in certain directions; but so long as States continue to be separate political bodies, in my judgment, the government will not by affirmative Federal legislation regulate this question of intercourse; and if this be so, as I propose to show, we must look to other remedies than to Federal succor, for that will be beyond our reach, if not beyond our desires. The fourth article of confederation provided that "the people of each State shall have free ingress and egress to and from any other State," and it is a singular fact that if this article had been preserved in the constitution, no State would have had the right to establish any quarantine regulations against another State, as the police power now exercised and conceded was completely surrendered. It is because this article was modified and the police power was not surrendered, that every law passed by Congress from the earliest date, May 27, 1796, to the latest law of 1879, during a period of eighty-three years, has been enacted

in aid and support of State quarantine laws, and in corroboration and recognition of the health laws of the State.

Such was the second law passed February 25, 1799. Such was the third law passed July 13, 1832, and such was the law of 1879, though presenting new features, yet distinctly recognizing the supremacy of the State quarantine laws, and the principle of obedience of Federal officers in the execution of the quarantine laws of the State.

Two strenuous efforts after the epidemics of 1798 and 1878 were made to influence Congress, and yet the police power of the State upon the subject of State quarantines remains to-day as practically unaffected by the assertions of Federal control as it was eighty years ago.

In 1798 New York city was visited by a terrible yellow fever epidemic. The excitement and alarm were very great. Gov. Mifflin, of Pennsylvania, not a local committee, proclaimed a non-intercourse between Philadelphia and New York city. Upon the disappearance of the epidemic thanksgivings were proclaimed in New York and the neighboring States, and fasts were proclaimed in Connecticut and neighboring cities. Gov. Jay, of New York, applied to the Federal Government, and although it was in the heyday of federalism, President Adams thus alluded to the subject in his message:

"While, with reverence and resignation we contemplate the dispensation of divine Providence in the alarming and destructive pestilence with which several of our cities and towns have been visited, there is cause for gratitude, and mutual congratulations that the malady has disappeared, and that we are again permitted to assemble in safety at the seat of Government for the discharge of our important duties. But when we reflect that this fatal disorder has, within a few years, made repeated ravages in some of our principal seaports, and with increased malignancy, and when we consider the magnitude of the evils arising from the interruption of public and private business, whereby the national interests are deeply affected, I think it my duty to invite the Legislature of the Union to examine the expediency of establishing suitable regulations in aid of the health laws of the respective States."

In the response, which was then customary from the Senate, they reply to this recommendation as follows:

"Sympathy for the sufferings of our fellow-creatures from disease, and the important interests of the Union demand of the National legislation a ready co-operation with the State Governments in the use of such means as seem best calculated to prevent the return of this fatal calamity."

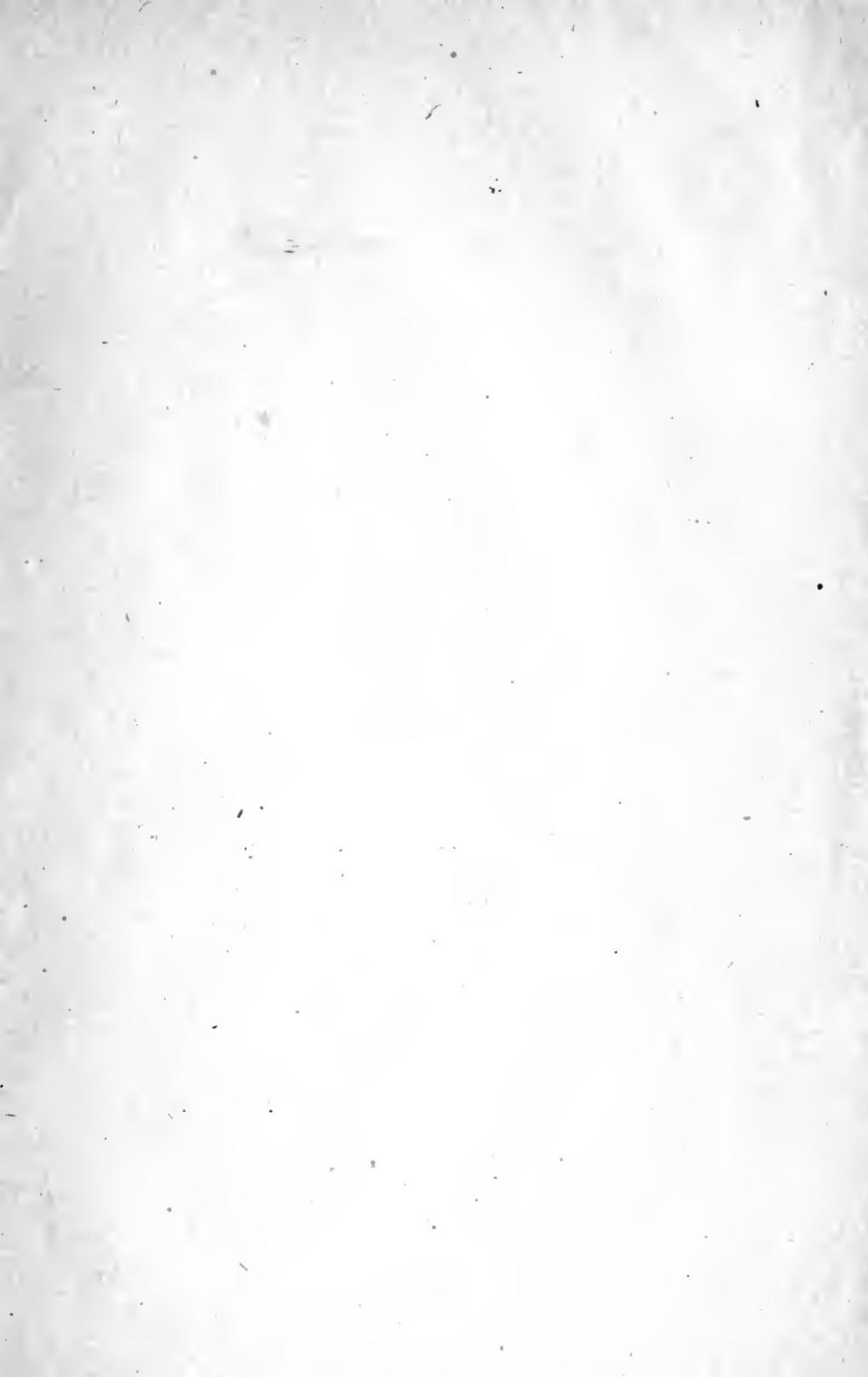
The result was the act of February 25, 1799. These eloquent words express to-day as they did then the spirit of Federal legislation—a strong sympathy, a noble charity, a manifest disposition to aid and succor and encourage, but at the same time an acknowledged impotency to control, to supersede and to interfere with State quarantine regulations; for upon questions non-political—in fact, upon this very question—the debates disclose that the Republicans of Massachusetts to-day is as jealous of this State police power as is the extremist Southern Democrat. So long as the local authorities of Alabama, Texas, Mississippi and our own State believe that their irregular methods of protection must be enforced, though our commerce perish, we must expect some other remedy than Federal aid in this trying emergency.

Yet some governmental authority must be invoked to determine this great question of intercourse during epidemics. This dangerous tendency to independent and irresponsible action discloses a serious defect that must be cured, and confronts us with a peril that must be circumvented. If these epidemics are to recur society must seek some other shelter than mob law—must depend upon something stronger than a sense of public justice—must assert its rights firmly and demand a satisfactory solution of this great question.

It occurs to me that most of this trouble could be avoided by placing this question upon a higher level. Let it be made a State and inter-State question. As to our foreign relations, it is assuming the proportions of an international question, and although as to our internal relations it is equally important, we find it to be a police jury question, and sometimes it does not even rise to that dignity. There is a responsibility when a State acts, there is a comity between States, there is a sense of

security and a guarantee of justice, of consistency, of uniformity, when a State deals with its citizens and other States. The proper functions of a police jury are not to determine a question of intercourse or non-intercourse, that may involve the commercial existence of a great city. If towns in Arkansas and Mississippi will plant cannon on the banks of the Mississippi River practically to prohibit its navigation, I say let it be done by the authority of the States of Arkansas and Mississippi, and let the responsibility rest upon them. If Montgomery is to deny the right to our people even in transit to breathe the air of heaven, I say let it be done by authority of the State of Alabama; if Mobile and Galveston are to steal our commerce, let it be done upon the authority of the States of Texas and Alabama, and if a man cannot travel in this State, let the prohibitions come from the State. Police juries can continue to build bridges and grant ferry privileges; cities and towns can continue to clean their streets and arrest drunken people, but this great question of intercourse during epidemics, and of protection to communities will rise to the level of the question of public crimes, to which it is equal in importance; to the question of public morality, to which it is not subordinate; and to the question of public order, to which it is not foreign—for if it is not deserving of that high station civil government during the severest crisis to which society is exposed becomes a pageantry and a mimickry.

I trust that the members of the medical profession who are so eminent for their attainments, so zealous for the public good, who, by some concerted action, deservedly exercise such a vast influence, and whose counsel and advice have such weight, will consider this great question so imperfectly presented by myself worthy of their most ambitious efforts and by creating and guiding public opinion, they may demand some legislation that will save our society from threatened anarchy, our commerce from certain destruction, and that will reconcile freedom of intercourse with due protection to communities against the introduction of contagious and infectious diseases.







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